

Monday, 3 February 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On

Processing of Defense Documents
in the
International Prosecution Section

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Julian Wolf
Court Reporter
IMTFE

Appearances:

FOR THE PROSECUTION SECTION:

MR. FRANK S. TAVENNER, Jr.

MR. ARTHUR A. SANDUSKY

FOR THE DEFENSE SECTION:

MR. WILLIAM LOGAN, Jr., Counsel for
Accused KIDO, Koichi

MR. ALFRED W. BROOKS, Counsel for
Accused KOISO, Kuniaki

MR. OWEN CUNNINGHAM, Counsel for
Accused OSHIMA, Hiroshi

MR. DAVID F. SMITH, Counsel for
Accused HIROTA, Koki

MR. ARISTEDES LAZARUS, Counsel for
Accused HATA, Shunroku

MR. GEORGE YAMAOKA, Counsel for
Accused TOGO, Shigenori

FOR THE OFFICE OF THE GENERAL SECRETARY, IMTFC:

LT. COL. G. W. HANLEY, Executive Officer

The proceeding was begun at 1510.

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THE PRESIDENT: Mr. Tavenner, you and Mr. Horwitz mentioned to me this morning that Captain Sandusky was going to approach me this afternoon to deal with some matter.

Who is going to speak on behalf of the prosecution?

MR. TAVENNER: I will ask Mr. Sandusky to explain the memorandum, which is a tentative agreement, an offer on the part of the prosecution to assist in the processing and translation problems of the defense.

THE PRESIDENT: Yes.

MR. TAVENNER: And then we will have a suggestion in the form of an order and we have asked defense counsel to be here -- to be present.

THE PRESIDENT: This meeting is called at the request of the prosecution.

MR. TAVENNER: Yes, sir.

MR. SANDUSKY: Mr. President, this meeting is to discuss the problem of processing of defense documents in the International Prosecution Section. Personnel of the International Prosecution Section have had discussions with, I think, appropriate personnel of the Defense Panel and both with all parties

concerned recognize the desirability of some sort of arrangement whereby the facilities of IPS which would not be needed at all times in the furtherance of IPS work could be made available for as supplementing the translation and processing facilities of Defense Panel.

As a result of several conversations, Mr. Mahoney, the Security Assistant of IPS, submitted the broad terms of an agreement whereby IPS would undertake to do a certain amount of processing and translating work for the Defense Panel.

Perhaps the most concise explanation of these terms and the best way to acquaint your Honor and the Tribunal with the terms would be either for you to read the memorandum of which I have a copy or, if you wish, I would gladly read it for the record.

THE PRESIDENT: You read it, Mr. Sandusky.

MR. SANDUSKY: (Reading)

"From: W.E. Mahoney, Security Assistant, IPS

"To: Mr. E.R. Harris, Administrative Officer of the Defense Panel, dated 20 January 1947.

"1. Reference is made to the several conversations among personnel of this section and personnel of the Defense Panel relative to the extent to which translation and processing facilities of IPS can be made

available to supplement your organization in the preparation of defense documents. As you know, it is the desire of Mr. Keenan to expedite the progress of the Trial by offering for Defense use the facilities of this section at such times as they are not required for immediate use for IPS work. Because it is not possible at this time to forecast future personnel and equipment needs, and because the functions of this section be on the present phase of this Trial, it is not feasible to consider the actual transfer of any personnel or equipment.

"2. In the discussions thus far, appropriate members of the Defense Panel have signified their understanding that the extent of the assistance from this section will necessarily be controlled by the **requirements** of this section. Further, it is accepted that the only workable basis of cooperation is the agreement that the defense will use its own facilities to translate and to process documents having immediate priority so that this section will not be subjected to the pressures attendant on meeting last minute deadlines.

"3. Although the circumstances of the Trial and nature of the work preclude any specific arrangements as to percentage of man hours or machine time or as to processing time required for specific documents, etc,

it nevertheless seems advisable to secure SCAP approval for the general terms of cooperation herein outlined. If the proposed basis of cooperation is agreeable to you, and you so indicate on return check sheet, I will undertake to bring this matter to the attention of the appropriate officer in SCAP."

Check note No. 2 in answer to that check note:

"From: The Defense Attorneys for Major War Criminals of the Far East.

"To: Mr. W.E. Mahoney, Executive Assistant,
Dated 24 January 1947.

"The Defense Panel in complete accord with the basis of cooperation proposed in the above check note. It is felt that such an arrangement is essential for expediting the progress of the Trial.

"E.H.R, for Mr. Harris."

Mr. Tavenner, do you think it desirable to read the additional check note? It covers substantially the same thing.

MR. TAVENNER: I don't think so. It is virtually the same.

MR. SANDUSKY: That, your Honor, is the status of matters at the present time. It was felt that the Tribunal should be fully cognizant of the terms of the agreement reached between members of the IPS and members

of the Defense Panel. I believe Mr. Tavenner has a proposed order you may or may not feel would be appropriate to the circumstances.

MR. TAVENNER: (Handing paper to the President)

It may be well that Mr. Sandusky read the entire correspondence or a great part of it. It would make the picture complete if your Honor will permit it. I suggest that he read the rest of the correspondence.

THE PRESIDENT: Yes; read it, Mr. Sandusky, please.

MR. SANDUSKY: This is a check note. (Reading)

"From: Mr. E.R. Harris, Administrative Officer,
Defense Panel

"To: IPS, GHQ, SCAP, dated 23 January 1947" --
I beg your pardon, I must make a correction:

"From: IPS

"To: Mr. E.R. Harris

"Reference is made to our check note to you, dated 20 January 1947," which I have just read, if you note, in this interpellation, "regarding processing of defense documents in the International Prosecution Section.

"On the telecon this morning Mr. Keenan emphasized that, 'In placing the facilities of our document department in the language pool at the disposal of the Defense Section, care must be exercised that the

International Prosecution Section not be placed in a position of assuming any responsibility whatsoever for any delays in translating, processing or mechanically putting together documents, that this obligation at all times must rest entirely upon the Defense Section and that they must assume full responsibility for such work.

"It is to be clearly understood by Defense Section that we desire to assist them in every way possible in the furtherance of these trials and will cooperate with them to the fullest extent, but that the defense will utilize their own personnel and facilities to the fullest degree and that the responsibility for any delay or for incorrect translation or mechanically putting together of the documents will not be borne by the International Prosecution Section.

"W. E. M. (Willis E. Mahoney), Executive Assistant."

Response to check note 2:

"From: The Defense Attorneys for the Major War Criminals

"To: IPS, GHQ, SCAP

"Dated: 24 January 1947

"The Defense Panel understands that the responsibility for the processing of defense documents

is its own. We are appreciative of the cooperative attitude of your section and it is not our intention to hold IPS responsible for anything but ordinary care which we know our documents will receive in your hands.

"E. R. H. (E. R. Harris), Administrative Officer."

THE PRESIDENT: I can see no objection to giving approval to the agreement, so far as the approval of the Tribunal is called for, to the suggestion laid before me and if both sides can agree on the extent and nature of the assistance the defense is to get, I have no reason to suggest any amendment or any variation of the agreement.

So far as approval is necessary or desirable, I give it on behalf of the Tribunal and the agreement will be embodied in an order of the Court.

MR. YAMAOKA: Your Honor, in so far as the defense is concerned, we appreciate extremely the cooperation of the prosecution which is being offered to us at your kind suggestion. We would be very grateful if you will approve that arrangement.

THE PRESIDENT: It does not involve any control by the prosecution in relation to the case. This is entirely in the hands of the defense counsel and the accused themselves. It is merely a case of using

assistance that is available to expedite the presentation of the defense case.

Understand, the order will be passed.

(Whereupon, at 1520, the proceeding was concluded.)

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